

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

RICHARD JORDAN and RICKY CHASE

PLAINTIFFS

VS.

CIVIL ACTION NO.: 3:15CV295-HTW-LRA

**MARSHALL L. FISHER, Commissioner,
Mississippi Department of Corrections, in
his Official Capacity; EARNEST LEE,
Superintendent, Mississippi State
Penitentiary, in his Official Capacity;
THE MISSISSIPPI STATE
EXECUTIONER, in his Official Capacity;
and UNKNOWN EXECUTIONERS, in
their Official Capacities**

DEFENDANTS

**THOMAS EDWIN LODEN, JR. and
ROGER ERIC THORSON**

INTERVENORS

ORDER

This matter came before the Court on a review of the docket. Several Motions filed earlier in this case remain pending on the docket although the Court has disposed of them or they have become moot. In order that the docket accurately reflect the status of this case, the Court will formally dispose of these Motions, as follows:

Motion for Enlargement of Time within which to File Answer to Complaint for Preliminary and Permanent Injunctive Relief under the Federal Civil Rights Enforcement Act of 1871 (42 U.S.C. § 1983) [Doc #17] - This Motion, which was filed on May 26, 2015, asked for an enlargement of time up to May 29, 2015, within which to file the Answer. The Answer was actually filed on May 28, 2015. Although the Plaintiffs objected to the substance of the Answer, they did not move to strike it as untimely. The Court finds that this Motion is moot.

Motion for Additional Pages for Memoranda in Support of Motion for Preliminary Injunction [Doc. #23] - By this Motion, the Plaintiffs sought leave to file a Memorandum and a Rebuttal Memorandum that totaled sixty-five pages, with the Defendants' being granted a like number of pages for their Reply. This Motion was filed on the same date as the Memorandum in Support, which was forty-two pages long. The Defendants' Reply Memorandum was only twenty-three pages long. The Plaintiffs' Rebuttal Memorandum, however, was also twenty-three pages, thus totaling the sixty-five pages that their counsel had requested. The Defendants did not object to the length of the Memoranda; therefore, this Motion is moot.

State Defendants' Motion to Dismiss [Doc. #24]. The Defendants' Motion sought dismissal for lack of subject matter jurisdiction, based on their argument that no live case or controversy existed. It was denied by an oral ruling during a telephone conference on August 25, 2015, and that denial was memorialized in an Order entered on the next day. The Defendants specifically appealed the oral denial by their Notice of Appeal filed on the same date as the telephone conference, and they appealed the written denial by an Amended Notice of Appeal filed a few days later. Through a clerical oversight, the Motion remains pending on the docket. To avoid any confusion that might be created by another denial at this late date, the Court will terminate this Motion.

Motion for Leave to Take Jurisdictional Discovery [Doc. #32]. The Plaintiffs' Motion sought discovery on the issue of subject matter jurisdiction, in order to respond to the Defendants' Motion to Dismiss. It was denied by an oral ruling during an evidentiary hearing on July 29, 2015. Additionally, in its Order of August 25, 2015, the Court made a

specific finding that it had subject matter jurisdiction over the case. For these reasons, this Motion is moot.

Unopposed Motion to Extend Defendants' Expert Designation, Discovery, and Motions Deadline [Doc. #62]. This Motion sought an extension of the following deadlines: Defendants' designation of experts to March 15, 2016; Discovery to May 16, 2016; Motions, including *Daubert* motions, to June 8, 2016. Counsel for the Defendants conferred with counsel for the Plaintiffs and the Intervenors, and there was no opposition to this request. Following the submission of the Motion, the Defendants filed their Designation of Experts on February 16, 2016. On April 21, 2016, the Court entered an Amended and Supplemental Scheduling Order setting the discovery and motion deadlines beyond the dates requested in the Motion. For these reasons, this Motion is moot.

IT IS, THEREFORE, ORDERED as follows:

1. The Motion for Enlargement of Time within which to File Answer to Complaint for Preliminary and Permanent Injunctive Relief under the Federal Civil Rights Enforcement Act of 1871 (42 U.S.C. § 1983) [Doc #17] is hereby **FOUND AS MOOT**.
2. The Motion for Additional Pages for Memoranda in Support of Motion for Preliminary Injunction [Doc. #23] is hereby **FOUND AS MOOT**.
3. The State Defendants' Motion to Dismiss [Doc. #24] is hereby **TERMINATED**.
4. The Motion for Leave to Take Jurisdictional Discovery [Doc. #32] is hereby **FOUND AS MOOT**.

5. The Unopposed Motion to Extend Defendants' Expert Designation, Discovery, and Motions Deadline [Doc. #62] is hereby **FOUND AS MOOT**.

IT IS SO ORDERED this the 20th day of September, 2016.

s/ Henry T. Wingate
UNITED STATES DISTRICT COURT JUDGE